IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

THE SIOUX CITY COMMUNITY SCHOOL DISTRICT, Petitioner, vs. PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent AND SIOUX CITY EDUCATION ASSOCIATION, Employee Organization/ Respondent.	CASE NO. LACV119830 DECISION ON APPEAL FROM AGENCY

FILED
'00 MAR 24 [illegible]:28
CRAIG JORGENSEN
DISTRICT COURT
CLERK DESIGNEE

On March 20, 2000, this appeal from a "Ruling on Negotiability" entered by the Public Employment Relations Board ("PERB") on December 6, 1999, came on for final hearing, pursuant to this court's Calendar Entry filed February 23, 2000. The Petitioner appeared by some (unidentified) members of the School Board and by Brian L. Gruhn, its attorney. The Respondent Sioux City Education Association appeared by Gerald L. Hammond, its attorney. The Respondent PERB appeared telephonically by Jan V. Berry, its attorney. Messrs. Gruhn, Hammond, and Berry were heard. The appeal was fully submitted and was taken under advisement.

1. PERB made a ruling on December 6, 1999, which held that certain proposals were mandatory subjects of bargaining. Those proposals are as follows:

Article X

E. Extra Assignment and Extended Contract

> 2. A secondary employee who teaches six (6) regular class periods in a seven (7) period day shall receive 9% of the base salary in addition to his/her regular salary.
>
> 4. Middle school teachers will receive additional compensation as provided in Article X (E)(2) for sixth period assignments not including the additional 30 minute period devoted to Quest, T.A. or Exploratory courses.

2. Petitioner has asked for review of the holding and asks it be reversed.

3. Section 20.7 of the Iowa Code grants a public employer the exclusive power, duty, and right to determine methods, means, assignments and personnel. Section 20.9 requires a public employer and an employee organization to negotiate with respect to wages.

4. Iowa follows a strict reading of the list in Section 20.9 of the Code in regard to what issues are subjects of mandatory bargaining. In determining the scope of a disputed proposal, a court must look to what the proposal, if incorporated into the collective bargaining agreement, would bind an employer to do. If a proposal in effect would prescribe what duties could be performed at certain times, it impinges on the employer's right to direct the work force. See Iowa City Fire Fighters Association v. PERB, 554 N.W.2d 707, 710-711 (Iowa 1996).

5. Looking at the proposal in X (E)(2), it is clear that the only thing that language of the proposal would require the employer to do is pay an employee 9% of the base salary if the employee teaches six regular class periods in a seven period day. It would not

require that there be seven period days, as Petitioner appears to suggest. All it requires is that if there is a seven period day and the employee teaches six regular class periods in that day said teacher shall be paid an additional 9% of the regular salary. The language does not require any negotiation of the workload—if the teacher teaches six periods in a seven-period day, the teacher is paid the extra amount. If the teacher does not teach six periods in a seven-period day the provision is inapplicable. The language in no way sets a maximum workload. If a teacher teaches seven periods in a seven-period day indubitably the provision would apply since the teacher would be teaching six periods in a seven-period day. If the day was an eight-period day the language would not apply. The language doesn't say what is to be paid for teaching six periods in an eight-period day, so one would have to look to other provisions of the contract to determine what such a teacher would be paid. The same would be true if the employer elected to have six-period days. The proposal makes no provision as to what is to be paid when there is a six-period day.

6. Turning to Article X (E)(4), the language proposed would require a middle school teacher receive 9% of base salary to be paid additionally if the teacher teaches "a sixth period" and provides periods devoted to certain things would not be counted as a sixth period. This language again does not require any number of periods----it does require additional pay if a teacher teaches a sixth period. If the employer had five-period days the proposal would not apply. If the employer had eight-period days the language would apply unless the reference to Article X (E)(2) were deemed to carry with it the limitation to a seven-period day (it might well be so construed). But all it requires of the employer is for

the employer to pay additional wages. It does NOT require the employer to change periods, or to redefine anything. It does say certain assignments (additional 30 minutes devoted to Quest, T.A. or Exploratory courses) would not count as a sixth period and thus additional compensation is not provided as to such courses. It does not prescribe what duties are to be performed. It merely tells what work is to be paid extra for. The language would in no way prevent the Petitioner from directing its teachers or to determine the class periods or to make any assignment it wished. It simply would require the Petitioner to pay more if it assigns a teacher for a sixth period other than Quest, T.A. or Exploratory courses. It would not prevent assignment to teach seven class periods.

7. Petitioner suggests that by excluding extra pay for a sixth period involving Quest, T.A. or Exploratory courses, the proposal would prescribe what duties could be performed during certain times of the day, and thus is similar to the proposal held to be permissive in Iowa City Fire Fighters Association v. PERB, supra. But the proposal at issue here is readily distinguishable from the proposal involved in Iowa City. That proposal sought to define times and dictate when the employee remains on duty and the work to be performed during the classifications made in the proposal, and thus purported to divide the workday and prescribe the duties to normally be performed during the time described. The proposal in the case at bar does not prescribe what is to be done at any time, but merely provides that teaching six regular periods in a seven-period day would entitle the teacher to additional pay, but that middle school teachers would not be eligible for extra compensation if the sixth period was devoted to Quest, T.A. or Exploratory courses. The language does not affect the employer's right to assign a teacher a sixth period, but merely

prescribes the amount to be paid if the employer does so and if a seven-period day is in effect.

8. The Ruling of PERB entered on December 6, 1999, is affirmed. The costs of this proceeding asking review and reversal of said Ruling are assessed against the Petitioner, the Sioux City Community School District.

Signed this 24th day of March, 2000.

DEWIE J. GAUL, Judge of the
Third Judicial District of Iowa

pls to: Jan V Berry
Brian Gribbin
Gerald Hammond
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